

**The House of the Good Samaritan d/b/a Samaritan Medical Center and Samaritan-Keep Nursing Home, Inc. and Service Employees International Union, Local 721. Case 3-CA-18798**

October 24, 1995

**DECISION AND ORDER**

BY MEMBERS BROWNING, COHEN, AND  
TRUESDALE

On July 14, 1995, Administrative Law Judge Jesse Kleiman issued the attached decision. The Respondents filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order as modified.<sup>2</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, The House of the Good Samaritan d/b/a Samaritan Medical Center and Samaritan-Keep Nursing Home, Inc., Watertown, New York, their officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(i).

“(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.”

2. Substitute the following for paragraph 2(a).

“(a) Maintain in effect the terms and conditions of employment specified in the now-expired collective-bargaining agreement concerning the technician unit unless they bargain to agreement or good-faith impasse with the Union and recognize and bargain with the Union as the exclusive representative of the employees in the technician unit.”

3. Substitute the attached notice for that of the administrative law judge.

<sup>1</sup> The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> We note that the judge inadvertently failed to conform the Order with the remedy and notice provisions of his decision in two respects. We correct these mistakes.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize  
To form, join, or assist any union  
To bargain collectively through representatives of their own choice  
To act together for other mutual aid or protection  
To choose not to engage in any of these protected concerted activities.

WE WILL NOT assist employees in the promotion, presentation, and circulation of a petition to decertify Service Employees International Union, Local 721 as the collective-bargaining representative of our employees in the technician unit.

WE WILL NOT refuse to bargain with the Union in good faith by withdrawing recognition from the Union regarding the technician unit.

WE WILL NOT refuse to bargain in good faith by refusing, on request, to furnish, in a timely and reasonably diligent manner, information relevant and necessary to the Union's performance as the exclusive representative of the employees in the technician unit or any other unit found appropriate under Section 9(b) of the Act for purposes of collective bargaining.

WE WILL NOT refuse to bargain in good faith by refusing to provide bargaining dates, in a timely and reasonably diligent manner, for the commencement of negotiations regarding the employees in the technician unit.

WE WILL NOT coercively interrogate our employees about their union activities or membership.

WE WILL NOT threaten employees with discharge even if they are represented by the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL maintain in effect the terms and conditions of employment specified in the now-expired collective-bargaining agreement concerning the technician unit unless we bargain to agreement or good-faith impasse with the Union, and WE WILL recognize and, on request, bargain with the Union as the exclusive representative of the employees in the technician unit concerning the terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, on request, provide the Union with relevant bargaining information, in a timely and reasonably diligent manner, requested in a June 27, 1994 letter, regarding the technician unit.

WE WILL, on request, provide the Union, in a timely and reasonably diligent manner, with bargaining dates for the commencement of negotiations for a collective-bargaining agreement regarding the technician unit.

THE HOUSE OF THE GOOD SAMARITAN  
D/B/A SAMARITAN MEDICAL CENTER  
AND SAMARITAN-KEEP NURSING HOME,  
INC.

*Doren G. Goldstone, Esq.*, for the General Counsel.

*Richard M. Chapman and Laura M. Purcell, Esqs.*, for the Respondent.

*Mitchel B. Cramer, Esq.*, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

JESSE KLEIMAN, Administrative Law Judge. On the basis of a charge and amended charge filed on August 29 and October 21, 1994, respectively, in Case 3-CA-18798 by Service Employees International Union, Local 721 (the Union), a complaint and notice of hearing was issued on November 14, 1994, against The House of the Good Samaritan d/b/a Samaritan Medical Center and Samaritan-Keep Nursing Home, Inc. (the Respondents) alleging that the Respondents had engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). By answer dated November 22, 1994, the Respondent denied the material allegations in the complaint and raised certain affirmative defenses.

A hearing was duly held before me in Watertown, New York, on January 10 and 11, 1995. Subsequent to the close of the hearing, the General Counsel and the Respondents filed briefs. Moreover, a petition for an injunction under Section 10(j) of the Act was filed on January 12, 1995, by the Board in the United States District court for the Northern District of New York (Case 95-CV-54). By Memorandum, Decision and Order dated May 13, 1995, United States District Chief Judge Thomas J. McAvoy granted the injunction.

On the entire record and the briefs of the parties and on my observation of the witnesses, I make the following

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENTS

It is undisputed and the evidence supports a finding that at all times The House of the Good Samaritan d/b/a Samaritan Medical Center and Samaritan-Keep Nursing Home, Inc. are not-for-profit corporations located in Watertown, New York, engaged, respectively, in the operation of a hospital providing health care and related services (Hospital) and the operation of a nursing home providing skilled nursing service, and are engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and have been health care institutions within the meaning of Section 2(14) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

Service Employees International Union, Local 721 is a labor organization within the meaning of Section 2(5) of the Act. The Union has represented two separate bargaining units, one of licensed practical nurses (LPN) employees employed at both the Hospital and the nursing home, the other of technical employees employed only at the Hospital. There are approximately 86 employees in the technician unit. I also find that pursuant to Section 9(a) of the Act, the Union has been and is the exclusive collective-bargaining representative of the LPN unit and this unit constitutes a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges, in substance, that the Respondents violated Section 8(a)(1) and (5) of the Act by unlawfully assisting in the promotion, presentation, and circulation of a petition to decertify the Union, threatening to fire employees even if they were represented by the Union, interrogating an employee about his union membership activities and sympathies, failing to furnish the Union with information and unduly delaying furnishing other information, withdrawing recognition of the Union as the exclusive collective-bargaining representative of the technician unit and refusing to bargain with the Union regarding this unit, and delaying bargaining with the Union regarding the LPN unit.

##### A. The Evidence

The parties have a past history of collective bargaining during which they jointly negotiated separate bargaining contracts for each bargaining unit the latest of which expired on October 31, 1994. Pursuant to the terms of those agreements, the parties engaged in midterm negotiations in November 1993 and reached agreement on economic modifications to the agreements although the expiration dates thereof remained October 31, 1994.<sup>1</sup>

According to the testimony of Jan-Marie Brown, a union representative, at a labor-management meeting on April 12, 1994, Timothy Ryan, the Respondents' director of human resources, requested an early start to negotiations for a new bargaining contract and the Union concurred. Brown told Ryan that "all [the Union] needs is dates" for negotiations. Ryan told Brown to call his office presumably for such dates. Linda Palmer, an employee who was present at this meeting testified similarly about Brown's remark to Ryan about the need for negotiation dates. Brown testified that she called Ryan's office several times in May 1994 but received no return calls from Ryan.<sup>2</sup> Ryan denied that there was any discussion at this meeting with regard to negotiations for a successor collective-bargaining agreement or prospective negotiation dates, although he admitted that the fact of the up-

<sup>1</sup> The parties thereafter negotiated a successor collective-bargaining agreement concerning the LPNs.

<sup>2</sup> Brown acknowledged that while she left brief messages for Ryan to call her, she did not mention that the call was in regard to negotiations. However, Joanne Pepper, an administrative assistant to Ryan, responsible for answering Ryan's phone, denied receiving any telephone messages during this period from Brown except on May 6, 1994, and this call did not concern negotiations.

coming negotiations may have arisen in "casual conversation."

On June 14, 1994, at a labor-management meeting Brown again asked Ryan for proposed dates for negotiations and Brown informed her that he would get back to the Union after he discussed dates with Dan Duggan, the Respondent's director of nursing services. By letter dated June 27, 1994, to the Respondents, the Union requested available dates for bargaining starting no later than the first week in September 1994. The letter states that, "If you would like to submit dates that you or your representative would be available to begin, it would be greatly appreciated." The letter also requested certain information regarding both bargaining units. This information when received is forwarded by the Union to its International Union for analysis to assist in negotiations.

In late June or early July 1994, Duggan informed Brown that approximately 15 to 20 mental health technicians were being hired by the Hospital to work in a satellite facility. The Union agreed to the Hospital's proposal that these mental health technicians be included in the technical employees unit.

At the July 12, 1994 labor-management meeting to discuss the forthcoming negotiations, the Union accepted the Respondents' proposal to dispense with labor-management meetings during negotiations for the successor bargaining agreements. The Union again requested possible negotiation dates from the Respondents but received none. Brown called Ryan several times for negotiation dates during July 1994 but was unsuccessful in reaching him.<sup>3</sup> In or about the middle or end of July 1994, Ryan met with employee Carolyn Husted, a member of the technician unit and learned about a "potential for a petition being circulated" to decertify the Union.

By letter dated August 18, 1994, the Union again requested the Respondents for bargaining dates. By letter dated August 23, 1994, the Respondents notified the Union that on the preceding day a decertification showing of interest signed by approximately 75 percent of the employees in the technician unit indicating that they no longer wished to be represented by the Union had been received. The Respondents indicated that because of this it would be unlawful to negotiate and sign a new bargaining contract regarding the technician unit. This letter informed the Union that the Respondents had filed an RM petition with the Board requesting an election. The Respondents also indicated that this did not affect the LPN bargaining unit and requested negotiation dates from the Union for a successor LPN agreement.

By letter dated September 16, 1994, the Union again requested the information sought in its previous letter of June 27, 1994, and dates for the commencement of negotiations for both bargaining units. The Respondents' response dated September 20, 1994, informed the Union that no information would be provided regarding the technician unit, nor would any new collective-bargaining agreement be negotiated for that unit. This letter did provide the information sought by the Union regarding the LPN unit, however, and proposed

<sup>3</sup>Peffer testified that she had no record of any calls from Brown to Ryan during the month of July 1994. Again, it would appear that Brown left no message for Ryan regarding dates or anything else.

several negotiation dates.<sup>4</sup> Brown testified that while the information forwarded by the Respondents was sent to the International Union, they did not receive an analysis thereof because there was insufficient time to process the information supplied before negotiations on a successor LPN agreement. The parties agreed to various dates in October 1994 and negotiations concerning a successor bargaining agreement for the LPN unit was reached.

The RM petition was filed by the Respondents with the Board on August 25, 1994, accompanied by the signatures of 62 employees purportedly in the technician unit at the time. On August 29, 1994, the Union filed the unfair labor practice charge in the instant case. The RM petition was dismissed by the Regional Director for Region 3 on November 16, 1994, because of reasonable cause to believe that the Respondents had engaged in unfair labor practices in violation of the Act that tainted the showing of interest. On January 6, 1995, the Board denied the Respondents' request for review of the Regional Director's dismissal of the petition.

#### The RM Petition

Sometime in August 1994, but prior to August 11, 1994, employee Husted asked Brad Eves, director of the cardio-pulmonary department, if she could meet with the employees in his department. Eves agreed and suggested that the shift change was the best time to meet with these employees. Eves testified that while he did not ask Husted for the purpose of the meeting nor did Husted offer a reason, he "strongly suspected" that her purpose in requesting the meeting was to discuss decertification of the Union with the employees in his department.

The cardio-pulmonary department of the Hospital has a shift overlap report system in which employees within the department meet at the change of shifts, with those coming off duty reporting to those coming on duty regarding the patients conditions under their care. This takes place in the "Respiratory Office" in the area of the conference table. The office is approximately 30-foot square.

Husted appeared at the cardio-pulmonary department at approximately 2:50 p.m. on August 11, 1994, during the shift report time within the department. There were approximately 10 bargaining unit employees present at and around the conference table. Also present was Department Director Eves and the two "working supervisors," David Sauveur (day shift) and Christene Fritton (evening shift).<sup>5</sup> Husted, who was not employed in the cardio-pulmonary department, but instead is employed in the radiology department, was introduced by Eves who said she was there to speak to employees in the department.<sup>6</sup> Eves then said to Sauveur and Fritton, "I'm not sure we should be here." Both Sauveur and

<sup>4</sup>Brown testified that while she needed the information when requested in June 1994, the Union did not expect negotiations to commence until September 1994. Ryan testified that the Respondents did not expect negotiations to commence until October 1994.

<sup>5</sup>According to the testimony of the Respondents' witnesses a good portion of the worktime of these two supervisors are in patient care. They also schedule work, evaluate employee's work and when applicable discipline employees in this department.

<sup>6</sup>Husted's duties did not normally take her into the cardio-pulmonary department.

Fritton, however, remained in the room during Husted's presentation.

According to some of the General Counsel's witnesses, during the course of Husted's remarks, Eves was present in the room a good deal of the time, except for going into his office once and then returning. Eves denied this, however, and insisted that he was in his office the entire time during the meeting although on cross-examination he acknowledged that he had left his door open and could observe some of the employees in the room from his desk.<sup>7</sup>

Husted explained that the reason she was there, was to gain support for a decertification petition. Questions were posed by the employees present and, in substance, Husted asserted that once a majority of the employees in the technician unit signed the showing of interest she would present it to the Hospital that would then withdraw recognition of the Union as the bargaining representative of the technician unit, and that no election would be necessary. Husted also told employees that it was not possible to bring in another union until a year had passed. One employee asked her whether, without the Union, employees would be protected against discriminatory discharge and Sauveur stated, "McClennon, we could fire you anyway. Sauveur also stated, "without the Union, I would not have to bother with scheduling employees, I could just tell them when to come in." These comments appear, however, to have been uttered in a joking manner according to witnesses testimony.

During the meeting Husted circulated employee decertification showing-of-interest sheets for employee signatures. Seven bargaining unit employees signed the showing-of-interest. It appears from the evidence that there were 22 signatures added to the list after the Husted meeting. Thus, a majority of the bargaining unit employees had not signed the showing-of-interest until after the Husted meeting.

After Husted finished her presentation, several employees including Pat Eckhard remained in the area to ask more questions. Eves thanked Husted for her time and some employees proceeded to their normal patient care duties and those who had completed their shifts left the Hospital. Eckhard testified that Husted asked Eves as to when she could contact those employees who were not present at the meeting, with Husted and Eves then proceeding over to look at the department work schedule listed on the bulletin board. Eves told her that he would apprise those employees in the unit who were not scheduled to work that shift, that Husted wanted to speak to them. Eckhard mentioned the mental health technical employees and asked Husted if they were included in the technician unit and as to whether Husted had contacted them. After Husted said she had not, Eves interjected that she should look into this.

Although employees testified that they had participated in employer sponsored in-service training or presentations, they could not recall a presentation being given of this nature in the past in the cardio-pulmonary department. Moreover, the type of solicitations within the department previously had encompassed donations for employees, Girl Scout cookies and the like.

Eckhard testified that the next day, August 12, 1994, while at work in the cardio-pulmonary department, Thomas Halloran came into the department and asked if there was

anybody present who had not signed the decertification showing-of-interest. Halloran, employed in the radiology department, as was Husted, had the showing-of-interest sheets with him. Eves, who was present, advised Halloran that Judy Keller, who had been on vacation when Husted had made her presentation to the cardio-pulmonary employees, was still on vacation, and added that he would let employees know who weren't there that Husted and Halloran had a petition and that anyone who wanted to sign it could contact them.

Francis Ramie, a respiratory therapy technician in the cardio-pulmonary department testified that on August 16, 1994, he was apprised by another employee in the department that Husted had telephoned him and would call back. Later that morning Eves told Ramie that, "Husted had been trying to get a hold of me to sign the petition for the techs to get decertified from the union." Eves indicated to Ramie that he had given Husted his telephone number the day before<sup>8</sup> and that Ramie was the only one in the department that had not signed the petition.<sup>9</sup> Although Ramie testified that there were other employees present when this took place including Sue Houston and David Sauveur, they were not involved in this conversation with Eves. Ramie did not respond to Eves and a few minutes later Eves approached him and repeated that Husted was trying to contact him. Eves testified that he could not recall any such exchange.

Later that morning Husted called Ramie in the cardio-pulmonary department and told Ramie that "she was circulating a petition to decertify the techs from the union." When Ramie asked Husted, in affect, as to who actually wanted this, Husted stated that she and Lyle Picard, in X-ray, had initiated the petition, and she suggested that Ramie speak to "Tim Ryan, if I wanted to, over this matter," which Ramie said he would do. During this conversation, Sauveur and Eves were present in the room.

On expiration of the collective-bargaining agreement concerning the technical employees unit on October 31, 1994, the Respondents withdrew recognition of the Union regarding the technician unit.

## B. Analysis and Conclusions

### 1. Withdrawal of recognition

The complaint alleges that about August 23, 1994, the Respondents withdrew their recognition of the Union as the exclusive collective-bargaining representative of the technician unit in violation of Section 8(a)(1) and (5) of the Act. The Respondents deny these allegations.

In *Hospital Employees District 1199P v. NLRB*, 864 F.2d 1096, 1101-1102 (3d Cir. 1989), the United States Court of Appeals for the Third Circuit stated:

A union chosen by an appropriate bargaining unit is presumed to have the continued support of the majority of its members. See *Fall River Dyeing*, 107 S. Ct. at

<sup>8</sup>Evidence in the record indicates that it was hospital policy to keep employees' home telephone numbers confidential. There is, however, posted on the bulletin board in the cardio-pulmonary department the departmental work schedule with a list of employee names and everyone's telephone numbers.

<sup>9</sup>In an affidavit given to a Board agent during the investigatory stage of these proceedings, Ramie had stated that Eves said that he was the only one "that she had not reached to sign the petition."

<sup>7</sup>Eves' office is contained within the "Respiratory Office."

2233; *NLRB v. Burns International Security Service, Inc.*, 406 U.S. 272, 279 fn. 3 (1972). . . . The purpose behind this presumption is to promote stability in the collective bargaining relationship and hence industrial peace. See *Fall River Dyeing*, 107 S. Ct. at 2233. "Where an employer remains the same, a Board certification carries with it an almost conclusive presumption that the majority representative status of the union continues for a reasonable time, usually a year. After this period, there is a rebuttable presumption on majority representation." *Burns*, 406 U.S. at 279 fn. 3 (citations omitted). After the initial year, the question of whether the presumption of majority support has been rebutted is recast in terms of whether the employer "has reasonable, good faith grounds for believing that the union has lost its majority status" after a collective bargaining agreement has expired. *International Association of Bridge, Structural & Ornamental Iron Workers, Local 3 v. NLRB*, 843 F.2d 770, 772 (3d Cir. 1988), cert. denied 109 S.Ct. 222 (1988).

In order to show good faith doubt, the employer must produce evidence probative of a change in employee sentiment. This is a difficult burden to meet. For example, the fact that an employee has crossed a picket line is not evidence that the employee has abandoned the union. *NLRB v. Frick Co.*, 423 F.2d 1327, 1333-1334 (3d Cir. 1970). Similarly, we have declined to accept testimony proffered by an employer's representative based on his subjective conclusions about change in sentiment. *Toltec Metals, Inc. v. NLRB*, 490 F.2d 1122, 1125 (3d Cir. 1974). In sum, for an employer "[t]o meet this burden 'requires more than an employer's mere mention of [its good faith doubt] and more than proof of the employer's subjective frame of mind.' What is required is a 'rational basis in fact.'" *Toltec*, 490 F.2d at 1125 (bracketed statement in original) quoting *NLRB v. Risk Equipment Co.*, 407 F.2d 1098, 1101 (4th Cir. 1969); see also *Frick*, 423 F.2d at 1331.

Moreover, another criterion to the professing of a good-faith doubt of the union's majority status is that this claim must be raised in a context free of illegal antiunion activities or conduct by the employer aimed at causing disaffection from the union. *Davies Medical Center*, 303 NLRB 195 (1991); *Celanese Corp. of America*, 95 NLRB 664 (1951). The Board has long held that an employer violates the Act when it withdraws recognition after providing unlawful assistance to employees attempting to remove a union or their collective-bargaining representative. *Lee Lumber & Building Material Corp.*, 306 NLRB 408 (1992). As the Board stated in *Hearst Corp.*, 281 NLRB 113 (1986):<sup>10</sup>

Decertification petition, of the type signed by the employees here, will generally be sufficient to cast doubt on a union's continued majority status if signed by a majority of the employees, and will afford an employee a reasonable basis for withdrawing recognition from a labor organization, provided that, prior thereto, the employer has not engaged in conduct designed to undermine employee support for, or cause disaffection with, the union.

<sup>10</sup> Enfd. 837 F.2d 1088 (5th Cir. 1988).

The Act requires that an employer not give illegal assistance to or control a decertification drive or risk tainting the resulting decertification petition. *Tyson Foods, Inc.*, 311 NLRB 552 (1993). As the Board stated in *Manhattan Eye, Ear & Throat Hospital*, 280 NLRB 113 at 114 (1986):<sup>11</sup>

In this regard, we note that an employer does not violate the Act merely by providing employees with information on how to resign from the union "as long as the employer makes no attempt to ascertain whether employees will avail themselves of this right nor offers any assistance, or otherwise creates a situation where employees would tend to feel peril in refraining from such revocation." *R. L. White Co.*, 262 NLRB 575, 576 (1982).

This illegal assistance includes the involvement of supervision in the soliciting of employee signatures. *Tyson Foods*, supra; *Davies Medical Center*, supra.

Furthermore, when an employer has committed unfair labor practices in connection with an employee decertification effort, the Board does not require proof of how many employees were exposed to or were aware of the employer's illegal conduct. *Manhattan Eye, Ear & Throat Hospital*, supra at 115 fn. 7. Also, the Board will not inquire whether such conduct actually coerced employees to withdraw their union support and any ambiguity as to whether employees would independently have arrived at the same decision would be decided against the employer engaging in the misconduct. *Hearst Corp.*, supra.

In applying the above principals to the facts in this case, at the August 11, 1994 meeting with employees in the cardio-pulmonary department, it was Brad Eves, the director of that department, who introduced Carolyn Husted to the employees. Also present were the department's two subordinate supervisors, David Sauveur and Christine Fritton. The presence of Eves, Sauveur, and Fritton at the Husted meeting, at which they could observe the employees signing of the showing-of-interest, reasonably would create the impression among the employees present, that the Respondents were not only actively involved in the decertification effort but were also monitoring who had signed.<sup>12</sup> It is interesting to note, and I believe supports the above conclusion, that after introducing Husted to the employees in his department,

<sup>11</sup> Enfd. 814 F.2d 653 (2d Cir. 1987), cert. denied 483 U.S. 1021 (1987).

<sup>12</sup> I credit the account of this meeting as given by the General Counsel's witnesses. They testified in a forthright manner and this testimony was generally consistent with each others. Additionally, while many of those witnesses previously held positions as employee representatives of the Union, Eckhard and McLennon did not. Because they are currently employed by the Respondent and gave their testimony adverse to the Respondents at considerable risk of economic reprisal, their testimony was contrary to their best interests and therefore not likely to be false. *Georgia Rug Mills*, 131 NLRB 1304 (1961). This is not to say that I found the testimony of the Respondents' witnesses to be totally unbelievable, but based on the demeanor of the witnesses and other facts in the record, I found the General Counsel's witnesses more credible. For example, Respondents' witness, Amy Cowles, seemed forgetful and parts of her testimony did not support that of other witnesses of both parties. Cowles stated that Eves did not introduce Husted at the meeting on August 11, 1994, while all the other witnesses said he did.

Eves remarked that perhaps he, Sauveur and Fritton should not be in attendance there.

Moreover, the comments made by Sauveur in response to employee questions directed to Husted, not to him, i.e., that the Respondents could fire employees regardless of the Union, and that employees scheduling would be easier without the presence of the Union, also tended to demonstrate to the employees present that he was actively participating in the course of the meeting, and that the Respondents were facilitating the decertification process and were interested in its outcome. Moreover, this also could reasonably tend to make the employees feel in peril if they refrained from signing the petition. *Erickson's Sentry of Bend*, 273 NLRB 63 (1984). Thus the participation and observation by Supervisors Sauveur and Fritton and the involvement of Director Eves, not only in introducing Husted, but his subsequent efforts to assist Husted and Halloran in contacting other employees in his department who did not attend the August 11, 1994 meeting with Husted, tainted the showing-of-interest and cannot be used to support a claim by the Respondents of a good-faith doubt of continuing majority by the Union. The finding of a violation in this regard is not predicated on a finding of actual coercion, but rather, on the tendency of such conduct to interfere with the employees' exercise of their protected rights under Section 7 of the Act.

As regards the statements made by Sauveur at the Husted meeting on August 11, 1994, even if made in a joking manner, these were inherently coercive inasmuch as the employees were in a setting where their lack of support for the decertification effort would be conspicuous. *Ethyl Corp.*, 231 NLRB 431 (1977). Sauveur's remarks therefore violated Section 8(a)(1) of the Act because they interfered with, restrained, and coerced employees in the exercise of their rights under Section 7 of the Act.

Similarly, Eves' efforts to facilitate contact between Husted and Ramie had a tendency to be coercive. On about August 16, 1994, Eves twice told Ramie that Husted was trying to contact him because he was the only employee she had not reached to sign the petition.<sup>13</sup> Eves also informed Ramie that he had given Husted, Ramie's home telephone number notwithstanding a Hospital policy that sought to keep this information confidential. The very fact that Eves indicated to Ramie a knowledge that all employees but Ramie had been contacted regarding the decertification effort tended to convey the unmistakable impression that Eves was actively involved in assisting the decertification drive.

The Respondents in their brief point to the Board's decision in *Choctawhatchee Electric Cooperative*, 274 NLRB 595 (1985), in support of their contention that no unlawful conduct occurred regarding the decertification petition. In *Choctawhatchee Electric* supra, a supervisor and three employees were sitting in a breakroom when another employee entered the room and began soliciting signatures for a decertification petition. It was established that the supervisor, as was his custom, was in the breakroom to give out work as-

signments and not for the purpose of surveillance nor was he engaged in surveillance in violation of the Act. In citing *Choctawhatchee Electric*, as similar to the facts in this case the Respondents assert that Sauveur and Fritton were working supervisors and were in the cardio-pulmonary department room during the Husted meeting as they were each day at shift changing time to perform their regular duties. In *Choctawhatchee Electric*, however, the supervisor involved did nothing with regard to the solicitation of signatures while in the instant case the supervisors were or gave the impression that they were assisting in the process of soliciting support for the decertification process, i.e., Eves introduced Husted to the gathered employees and Sauveur made comments that tended to indicate participation in the meetings content.

From all of the above, I find and conclude that the Respondents' assistance and conduct in relation to the decertification effort fatally tainted the showing-of-interest and could not serve as a basis for the Respondents to withdraw their recognition of the Union as the bargaining representatives of the Respondents' employees in the technician unit. Therefore, the Respondents' withdrawal of recognition of the Union violated Section 8(a)(1) and (5) of the Act. *Davies Medical Center*, supra; *Manhattan Eye, Ear & Throat Hospital*, supra; *Erickson's Sentry of Bend*, supra.

## 2. The duty to provide information

The complaint alleges that the Respondents violated Section 8(a)(1) and (5) of the Act by failing to furnish the Union with information requested by the Union relative to the technician unit, and also unduly delayed furnishing the Union with requested information regarding the LPN unit. The Respondents denied these allegations.

It is well established that a labor organization which has an obligation under the Act to represent employees in a bargaining unit with respect to wages, hours, and working conditions, including collective bargaining, is entitled, by operation of the statute, on appropriate request, to such information as may be relevant to the proper performance of that duty. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Where the requested information concerns items and conditions of employment relating to employees in the bargaining unit represented by the union, the information is presumptively relevant to the union's representative function. *George Koch & Sons, Inc.*, 295 NLRB 695 (1989); *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863 (9th Cir. 1977). The Board uses a liberal discovery-type standard to determine whether the information is relevant, or potentially relevant to require its production. *NLRB v. Acme Industrial Co.*, supra; *W-L Molding Co.*, 272 NLRB 1239 (1984). In evaluating the relevance of broad categories of requested information the Board stated in *Ohio Power*, 216 NLRB 987 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976):

Where the information sought covers the terms and conditions of employment within the bargaining unit, thus involving the core of the employer-employee relationship, the standard of relevance is very broad, and no specific showing is normally required.

In the instant case it is clear that the Union's request for wage and benefit, workload and staffing, and financial data

<sup>13</sup>I find that this constituted unlawful interrogation of Ramie in violation of Sec. 8(a)(1) of the Act. Eves' actions reasonably tended to restrain, coerce, and interfere with Ramie's rights guaranteed under Sec. 7 of the Act. Not only did Eves convey to Ramie the Respondents' interest and participation in the decertification process as indicated above, but also their interest in what Ramie intended to do regarding his union sympathies and loyalties.

regarding the technical and LPN bargaining units made in its June 27, 1994 letter to the Respondents was relevant and the Respondents really do not dispute this. The Respondents assert, however, that they never refused to provide the requested information for the technician unit because they were not legally bound to do so because they had received an employee petition "disavowing continued representation by the Union on August 23, 1994." *Henessey Products*, 273 NLRB 1511 (1985). In view of the fact that I found that the Respondents unlawful conduct tainted the employee petition and that their withdrawal of recognition of the Union as the bargaining representative of the technician unit employees was in violation of Section 8(a)(1) and (5) of the Act, I find and conclude that the Respondents violated Section 8(a)(1) and (5) of the Act by failing to provide the requested information to the Union concerning the technician unit. *NLRB v. Gulf Atlantic Warehouse Co.*, 291 F.2d 475 (5th Cir. 1961); *NLRB v. Fitzgerald Mills Corp.*, 315 F.2d 260 (2d Cir. 1963), cert. denied 375 U.S. 834 (1963). In a somewhat indirect way, also see *Davies Medical Center*, supra.

As regards the Union's requisition for information regarding the LPN unit employees contained in its letter to the Respondents dated June 27, 1994, this letter was received by the Respondents on July 6, 1994. The Respondents provided the requested information to the Union on September 20, 1994. The General Counsel asserts that this was an undue delay in furnishing the Union with the information in violation of the Act. In *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993), the Board stated:

Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow.

Moreover, when requested information is presumptively relevant or has been demonstrated to be relevant, the burden shifts to the respondent to establish that the information is not relevant, does not exist, or for some other valid and acceptable reason cannot be furnished to the requesting party. *Somerville Mills*, 308 NLRB 425 (1992); *Postal Service*, 276 NLRB 1282 (1985). In evaluating the promptness of the information requested, the Board will consider the complexity and extent of the information sought, its availability and the difficulty in retrieving the information. *Postal Service*, 308 NLRB 547 (1992).

The Respondents assert that they did not expect negotiations to commence until October 1994, 3 months subsequent to the Union's June 27, 1994 request for information, the Union failed to inform the Respondents of any urgency in receiving the information, Ryan was busy with other matters and both he and other relevant employees were in part on vacation during this period, and that the information sought was not readily available in explaining the delay in providing the Union with the requested information.

The Respondents did not adequately prove, however, that the requested information was not readily available and in fact never raised this with the Union, nor did they show that the information sought was overly burdensome. *Yeshiva University*, 315 NLRB 1245 (1994); *Kroger Co.*, 226 NLRB 512 (1976). Moreover, the record does not establish that the in-

formation sought was not readily available from the Respondents' records nor voluminous or extensive to justify any undue delay in complying with the Union's request. *Tower Books*, 273 NLRB 671 (1984). Additionally, neither Ryan's perception that the negotiations were to commence in October 1994 or that he considered other matters more important or urgent justifies the undue delay in providing the Union with the requested information. *Bundy Corp.*, 292 NLRB 671 (1989).

Nor did the Respondents allege or prove as a defense that the Union already had in its possession, in the form of monthly reports supplied to it by the Respondents, the means from which the Union itself could obtain the sought after information. See *Hospitality Care Center*, 307 NLRB 1131 (1992); *Illinois-American Water Co.*, 296 NLRB 715 (1989); *Beef Packers*, 193 NLRB 1117 (1971). Also, while it is true that the Union did not inform the Respondents that it required the information so that the International Union could provide it with an analysis prior to the commencement of negotiations to assist in the collective-bargaining process, yet had the Respondents promptly and timely complied with the Union's request and the Respondents duty to do so, the Union would not have been disadvantaged in not receiving the analysis in time to assist in the negotiation process.

From all the above, I find and conclude that by unduly delaying providing the Union with relevant information it requested regarding the LPN unit for approximately 2-3 months, the Respondents impeded the Union's preparations for the upcoming negotiations with it and in general interfered with the Union's ability to represent the LPN unit employees, in an informed and effective manner and thereby violated Section 8(a)(1) and (5) of the Act. *Bundy Corp.*, supra; *Postal Service*, supra; *Tower Records*, supra.

Additionally, in view of my above finding that the Respondents violated Section 8(a)(1) and (5) by unlawfully withdrawing their recognition of the Union as the bargaining representative of their employees in the technician unit, their refusal to furnish the Union with relevant information requested regarding this unit also constitutes a violation of Section 8(a)(1) and (5) of the Act. *NLRB v. Gulf Atlantic Warehouse Co.*, 291 F.2d 475 (5th Cir. 1961); *Fitzgerald Mills Corp.*, 313 F.2d 260 (2d Cir. 1963), cert. denied 375 U.S. 834 (1963); *Boston Herald-Traveler*, 210 F.2d 234 (1st Cir. 1954), enf'd. 102 NLRB 627 (1953).

### 3. Additional 8(a)(1) and (5) allegations

The complaint alleges that the Respondents unlawfully delayed contract negotiations regarding the technician and LPN units and thereby violated Section 8(a)(1) and (5) of the Act by failing and refusing to bargain with the Union. The Respondents deny these allegations.

Section 8(d) of the Act requires that parties to collective bargaining "confer in good faith with respect to wages, hours, and other terms and conditions of employment." Preliminary arrangements for bargaining are considered mandatory subjects of bargaining and include the setting of dates for negotiations. *General Electric Co.*, 173 NLRB 253 (1968), enf'd. 412 F.2d 512 (2d Cir. 1969).

The record indicates that the Union at labor-management meetings and in letters to the Respondents, requested bargaining dates from the Respondents for the commencement

of negotiations.<sup>14</sup> The Respondents failed to comply with these requests regarding the technician unit employees. Having previously found that the Respondents unlawfully withdrew recognition of the Union as the bargaining representatives of the technician unit employees, I find that their refusal to provide bargaining dates to the Union for the commencement of negotiations for a successor contract for the technician unit employees violated Section 8(a)(1) and (5) of the Act. *General Electric*; supra; *Lee Lumber*, supra.

The Respondents also delayed providing bargaining dates for the LPN unit negotiations. The Union had requested that negotiations begin in September 1994, and it had been agreed between the parties to not hold labor-management meetings after July 1994 in anticipation of the commencement of negotiations. The Respondents have not adequately explained the 2-3 months delay in providing bargaining dates for the LPN unit negotiations. Under the circumstances present in this case, I therefore find and conclude that the Respondents unlawfully delayed providing bargaining dates for the LPN unit negotiations in violation of Section 8(a)(1) and (5) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondents set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of the Respondents described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### THE REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The Respondents shall be ordered to furnish the Union with the information it requested regarding the technician unit employees in a timely and reasonably diligent manner.

Having found that the Respondents have refused to meet and bargain with the Union in violation of Section 8(a)(1) and (5) of the Act with regard to the technician unit, it will be ordered to cease and desist therefrom and, on request, to bargain collectively in good faith with the Union as the exclusive representative of all the employees in the appropriate unit, and, in the event an understanding is reached, to embody such understanding in a signed agreement. See *Winn-Dixie Stores*, 243 NLRB 972 (1979). In addition, the Respondents shall maintain in effect the terms and conditions of employment specified in the now-expired collective-bargaining agreement concerning the technician unit unless and until the Respondents and the Union agree otherwise, or until the parties bargain to a legitimate impasse. The parties have

<sup>14</sup> I credit the testimony of Brown to the effect that the Union requested bargaining dates at the April-June 1994 labor-management meetings with the Respondent. She testified in a forthright and clear manner. I also dispute the Respondents' contention that the Union's June 27, 1994 letter did not contain a specific request for bargaining dates. The facts in this case render ingenuous that contention, especially in view of the prior request for bargaining dates.

negotiated and signed a successor collective-bargaining agreement regarding the LPN unit.

As the complaint does not allege any unilateral changes after the Respondents unlawful withdrawal of recognition, the issue was not litigated, and no unilateral change finding was made by me, I therefore provide no make-whole relief. *Davies Medical Center*, supra.

Because of the nature of the unfair labor practices found herein, and in order to make effective the interdependent guarantees of Section 7 of the Act, I recommend that the Respondents be ordered to refrain from in any like or related manner abridging any of the rights guaranteed employees by Section 7 of the Act. The Respondent should also be required to post the customary notice.

#### CONCLUSIONS OF LAW

1. The House of the Good Samaritan d/b/a Samaritan Medical Center and Samaritan-Keep Nursing Home, Inc. are and have been at all times material employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Service Employees International Union, Local 721 is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Respondents (the technician unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

The unit described in Article I of the most recently expired collective bargaining agreement between the Respondent and the Union, effective January 16, 1993 through October 31, 1994.

4. The following employees of the Respondents (the LPN unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

The unit described in Article I of the most recently expired collective bargaining agreement between the Respondents and the Union, effective January 16, 1993 through October 31, 1994.

5. At all times material, the Union has been, and is now, the exclusive bargaining representative of all employees in the appropriate units set forth above, for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

6. By supervisors providing unlawful assistance in the promotion, presentation, and circulation of a petition to decertify the Union as the technician unit employees collective-bargaining representative the Respondents have violated Section 8(a)(1) of the Act.

7. By withdrawing and withholding recognition of the Union as the exclusive representative of its technician unit employees in the appropriate unit, the Respondents have refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act.

8. By threatening employees that the Respondents could fire them even if the employees were represented by the Union, the Respondents have violated Section 8(a)(1) of the Act.

9. By coercively interrogating employees about their union membership, activities, and sympathies, the Respondents have violated Section 8(a)(1) of the Act.

10. By failing and refusing to furnish the Union with relevant information and bargaining dates for negotiations in connection with the technician unit employees in the appropriate unit described above, the Respondents have failed and refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act.

11. By failing and refusing to timely furnish the Union with relevant requested information and bargaining dates for negotiations regarding the LPN unit employees in the appropriate unit described above, the Respondents have failed and refuse to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act.

12. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>15</sup>

#### ORDER

The Respondents, The House of the Good Samaritan d/b/a Samaritan Medical Center and Samaritan-Keep Nursing Home, Inc., Watertown, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Assisting employees in the promotion, presentation, and circulation of a petition to decertify Service Employees International Union, Local 721 as the exclusive collective-bargaining representative of employees in the technician unit found appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

(b) Withdrawing recognition from, and refusing to bargain collectively with, the Union as the exclusive representative of the employees in this appropriate technician unit.

(c) Refusing to furnish any information, in a timely and reasonably diligent manner, requested by the Union that is relevant and necessary to its role as the exclusive bargaining representative of employees in the appropriate technician unit.

(d) Unduly delaying the furnishing of information requested by the Union that was relevant and necessary to its role as the exclusive bargaining representative of the employees in the appropriate LPN unit.

(e) Refusing to bargain in good faith with the Union as the exclusive bargaining representative of the employees in the appropriate technician unit by failing to provide bargaining dates, in a timely and reasonably diligent fashion, for the commencement of negotiations towards a successor collective-bargaining agreement.

(f) Refusing to bargain in good faith with the Union as the exclusive bargaining representative of the employees in the appropriate LPN unit by unduly delaying providing the Union with bargaining dates for the commencement of negotiations toward a successor collective-bargaining agreement.

(g) Coercively interrogating employees about their union activities and support.

(h) Threatening employees with discharge even if they were represented by the Union.

(i) In any other manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with the Union as the exclusive representative of the employees in the appropriate bargaining technician unit.

(b) On request, provide the Union with relevant bargaining information that it previously requested in a June 27, 1994 letter for the technician unit.

(c) On request, provide the Union in a timely and reasonably diligent fashion with bargaining dates for the commencement of negotiations concerning the technician unit.

(d) Post at both The Hospital of the Good Samaritan d/b/a Samaritan Medical Center facility and the Samaritan-Keep Nursing Home, Inc. facility in Watertown, New York, copies of the attached notice marked "Appendix."<sup>16</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

<sup>15</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>16</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."